UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LANSUPPE FEEDER, LLC, Plaintiff, vs. WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee for Soloso CDO 2005-1 Ltd., Defendant, and SOLOSO CDO 2005-1 LTD., Nominal Defendant, and OXFORD UNIVERSITY BANK; CITIZENS BANK & TRUST COMPANY; COASTAL COMMERCE BANK; GUARANTY BANK AND TRUST COMPANY; BANKFIRST FINANCIAL SERVICES; THE FIRST, A NATIONAL BANKING ASSOCIATION; COPIAH BANK, NATIONAL ASSOCIATION; & PRIORITYONE BANK, Intervenors.	Case No. 1:15-cv-07034 (LTS)

LANSUPPE FEEDER, LLC'S RULE 56.1(b) RESPONSE TO THE INTERVENORS' RULE 56.1(a) STATEMENT OF MATERIAL FACTS

Jonathan E. Pickhardt
Andrew S. Corkhill
Blair A. Adams
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000

Attorneys for Plaintiff
Lansuppe Feeder, LLC

Pursuant to Local Civil Rule 56.1(b) of this Court, Plaintiff Lansuppe Feeder, LLC ("Lansuppe") respectfully submits this response to the Rule 56.1(a) Statement of Material Facts submitted by Oxford University Bank; Citizens Bank & Trust Company; Coastal Commerce Bank; Guaranty Bank and Trust Company; BankFirst Financial Services as Successor-in-Interest to Newton County Bank; The First, A National Banking Association; Copiah Bank, National Association; and PriorityOne Bank (collectively, the "Intervenors") in support of the Intervenors' Cross-Motion for Summary Judgment, dated October 5, 2015.[1]

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1. In 2006 and 2007, Coastal Commerce Bank purchased Soloso CDO 2005-1 Ltd. Class A-3L Notes ("Notes") for approximately $1.7 million. Declaration of Mark Folse, ¶ 4.

Plaintiff's Response: Disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). ***See*** **Declaration of Andrew S. Corkhill in Support of Plaintiff's Memorandum of Law in Opposition to Intervenors' Cross-Motion for Summary Judgment ("Corkhill Decl.") ¶¶ 15-17, 25(h).**

2. In 2005, Oxford University Bank purchased Soloso CDO 2005-1 Ltd. Class A-3B Notes for approximately $350,000. Declaration of David Guyton, ¶ 4.

Plaintiff's Response: Disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct

[1] Capitalized terms used but not defined herein have the meaning given to them in the Indenture.

sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). ***See*** **Corkhill Decl. ¶¶ 15-17, 25(h).**

3. In 2005, Citizens Bank & Trust Company purchased Soloso CDO 2005-1 Ltd. A-3L Notes for approximately $1 million. Declaration of Frank Sibley, ¶ 4.

Plaintiff's Response: Disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). ***See*** **Corkhill Decl. ¶¶ 15-17, 25(h).**

4. In 2006 and 2007, Guaranty Bank and Trust Company purchased Soloso CDO 2005-1 Ltd. Class A-3L Notes for approximately $1.7 million. Declaration of Jake Bellipanni, ¶ 4.

Plaintiff's Response: Disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). ***See*** **Corkhill Decl. ¶¶ 15-17, 25(h).**

5. In 2005, Newton County Bank purchased Soloso CDO 2005-1 Ltd. Class A-3B and A-3L Notes for approximately $500,000. Declaration of William L. Freeman, Jr, ¶ 4. BankFirst Financial Services is the successor in interest to Newton County Bank. Declaration of William L. Freeman, Jr, ¶ 2.

Plaintiff's Response: Disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). ***See*** **Corkhill Decl. ¶¶ 15-17, 25(h).**

6. In 2005, The First, A National Banking Association purchased Soloso CDO 2005-1 Ltd. Class A-3L Notes for approximately $250,000. Declaration of Donna Lowery, ¶ 4.

Plaintiff's Response: Disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). *See* Corkhill Decl. ¶¶ 15-17, 25(h).

7. In 2005, Copiah Bank, National Association purchased Soloso CDO 2005-1 Ltd. Class A-3B and A-3L Notes for approximately $250,000. Declaration of George Marx, ¶ 4.

Plaintiff's Response: Disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). *See* Corkhill Decl. ¶¶ 15-17, 25(h).

8. In 2005, PriorityOne Bank purchased Soloso CDO 2005-1 Ltd. Class A-3B Notes for approximately $700,000. Declaration of Robert Barnes, ¶ 4.

Plaintiff's Response: Disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). *See* Corkhill Decl. ¶¶ 15-17, 25(h).

9. The Soloso CDO 2005-1 Notes were issued by Nominal Defendant Soloso CDO 2005-Ltd. (the "Issuer"). Docket 8-1, Declaration of Representative of Lansuppe Feeder, LLC, Exhibit A, Indenture.

Plaintiff's Response: Not disputed.

10. Soloso CDO 2005-1 Ltd. (the "Issuer") is not a registered investment company and sold these unregistered securities under an exemption provided for in the Investment Company Act of 1940 (the "ICA"). To qualify for that exemption, the Issuer could only sell notes to "Qualified Purchasers," as defined under the Indenture and the ICA. If the Issuer sold notes to non-Qualified Purchasers, they must register as an investment company. Docket 8-1, Declaration of Representative of Lansuppe Feeder, LLC, Exhibit "A," Indenture.

Plaintiff's Response: Disputed to the extent that the statement offers a legal conclusion that "[t]o qualify for [an unspecified exemption to the ICA], the Issuer could only sell notes to "Qualified Purchasers," as defined under the Indenture and the ICA" and that "[i]f the Issuer sold notes to non-Qualified Purchasers, they must register as an investment company." Further disputed as to the statement that "Soloso CDO 2005-1 Ltd. (the "Issuer") . . . sold these unregistered securities under an exemption provided for in the Investment Company Act of 1940," insofar as that statement purports to imply that the Issuer sold any securities to the Intervenors, on the basis that that statement is not supported by any of the cited evidence and is directly contradicted by the plain terms of the Offering Circular. Pickhardt Decl. Ex. 1 at 71, Dkt. No. 76-1. Further disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). *See* Corkhill Decl. ¶¶ 15-17, 25(f), 25(g). Not disputed as to the statement "Soloso CDO 2005-1 Ltd. (the "Issuer") is not a registered investment company."

11. The Notes are governed by the Soloso CDO 2005-1 Indenture. Docket 8-1, Declaration of Representative of Lansuppe Feeder, LLC, Exhibit "A," Indenture.

Plaintiff's Response: Not disputed.

12. Under Section 5.1(e) of the Indenture, it is an Event of Default if the Co-Issuers or the Trust Estate is required to register as an "investment company" under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, *et seq*. Under Section 5.4, 100% of all Noteholders must approve liquidation in the case of an Event of Default under Section 5.1(e). Docket 8-1, Declaration of Representative of Lansuppe Feeder, LLC, Exhibit "A," Indenture.

Plaintiff's Response: Disputed to the extent that the statement offers a legal conclusion. Further disputed to the extent that the statement is an incomplete or inaccurate recitation of the terms of the Indenture.

13. Bank of Morton, Bank of Kilmichael, Commercial Bank (Dekalb), Desoto County Bank (now known as First Commercial Bank), First State Bank, and Holmes County Bank and Trust Company (the "Non-Qualified Purchasers") were all Non-Qualified Purchasers at the time they purchased the Soloso CDO 2005-1 Notes, meaning those banks at the time of the purchase of the notes were companies with less than $25 million in investments. Declaration of Sam McClatchy, ¶¶ 4, 6; Declaration of Holt Smith, ¶¶ 4, 6; Declaration of Tito Echiburu, ¶¶ 4, 6; Declaration of Michael Dudley, ¶¶ 4, 6; Declaration of Alan H. Walters, ¶¶ 4, 6.; Declaration of Buddy Mortimer, ¶ 4, 6.

Plaintiff's Response: Disputed to the extent that the statement offers a legal conclusion. Further disputed on the basis that the statement is not supported by any of the cited evidence, because the cited declarations contain conclusory legal statements and are not entitled to any evidentiary weight. Further disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). *See See* Corkhill Decl. ¶¶ 15-24, 25(a), 25(b), 25(f).

14. Neither the Intervenors or the Non-Qualified Purchasers were provided the Indenture or other documents related to the Soloso 2005-1 CDO upon purchase of the Notes, nor were they required to certify that they qualified as purchasers under the Indenture and ICA. Declaration of Sam McClatchy, ¶ 5; Declaration of Holt Smith, ¶ 5; Declaration of Tito Echiburu, ¶ 5; Declaration of Michael Dudley, ¶ 5; Declaration of Alan H. Walters, ¶ 5; Declaration of Buddy Mortimer, ¶ 5; Declaration of William L. Freeman, ¶ 5; Declaration of Jake Bellipanni, ¶ 5;; Declaration of Donna Lowery, ¶ 5; Declaration of George Marx, ¶ 5; Declaration of Robert Barnes, ¶ 5; Declaration of David Guyton, ¶ 5; Declaration of Mark Folse, ¶ 5; Declaration of Frank Sibley, ¶ 5.

Plaintiff's Response: Disputed on the basis that the statement is not supported by any of the cited evidence, because the cited declarations contain conclusory statements devoid of any foundation for the declarant's knowledge and are not entitled to any evidentiary weight. Further disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). ***See*** **Corkhill Decl. ¶¶ 15-17, 25(c), 25(d).**

15. Section 5.1(a) of the Indenture provides, "a default in the payment of the Periodic Interest Amount due on [the] Class A-1 Notes." Upon that type of default, the Indenture provides that a vote of only "66-2/3" of the holders of the "Aggregate Principal Amount of the Outstanding Class A-1 Notes," a class of Noteholders that does not include the Intervening Banks, is needed to liquidate the trust. Docket 8-1, Declaration of Representative of Lansuppe Feeder, LLC, Exhibit "A," Indenture; *see also* Declaration of William L. Freeman, ¶ 4; Declaration of Jake Bellipanni, ¶ 4; Declaration of Donna Lowery, ¶ 4; Declaration of George

Marx, ¶ 4; Declaration of Robert Barnes, ¶ 4; Declaration of David Guyton, ¶ 4; Declaration of Mark Folse, ¶4; Declaration of Frank Sibley, ¶ 4.

Plaintiff's Response: Disputed to the extent that the statement offers a legal conclusion. Not disputed as to the statement that the Intervenors do not hold Class A-1 Notes.

16. On June 7, 2013, Wells Fargo posted a notice on their website that a payment default had occurred under Section 5.1(a)(iii)(A) of the Indenture and that the Aggregate Principal Amount of the Notes was immediately due and payable under Section 5.2(a) of the Indenture. Docket 8-3, Declaration of Representative of Lansuppe Feeder, LLC, Exhibit "C," Indenture.

Plaintiff's Response: Not disputed.

17. The Intervening Banks did not receive a copy of this notice until early December 2014, when an investment advisor to the Intervening Banks located the notice on Wells Fargo's website and notified the Intervening Banks of the Event of Default. At that time, Wells Fargo had not given notice that it was liquidating the Trust Estate. Declaration of Frank W. Smith, III, ¶ 5.

Plaintiff's Response: Disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). *See* Corkhill Decl. ¶¶ 15-17, 25(i).

18. On liquidation, under Sections 11.1(b) and (d) of the Indenture, the senior Noteholders are entitled to be paid in full the Cumulative Interest Amount and the Aggregate Principal Amount before junior Noteholders (including the Intervening Banks) become entitled

to any proceeds of the liquidation. Docket 8-1, Declaration of Representative of Lansuppe Feeder, LLC, Exhibit "A," Indenture.

Plaintiff's Response: Disputed to the extent that the statement offers a legal conclusion. Otherwise, not disputed.

19. [Omitted by the Intervenors.]

20. As a result of these developments, in December 2014, the Intervening Banks agreed to coordinate requesting certain information, and on December 9, 2014, Coastal Commerce Bank wrote to Wells Fargo, as Trustee, requesting a list of all other Noteholders, as well as the Memorandum of Association of the Issuer, the Articles of Association of the Issuer, the resolutions of the director for the Issuer authorizing the issuance of the Notes, including but not limited to the Class A Notes, so that the Intervening Banks might gain information to help them protect their interests as junior tranche Noteholders. Declaration of Mark Folse, ¶ 10, Exhibit "A."

Plaintiff's Response: Disputed on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). *See* Corkhill Decl. ¶¶ 15-17, 25(j). Not disputed as to the existence of the letter from Coastal Commerce Bank to Wells Fargo, as Trustee, attached as Exhibit A to the Declaration of Mark Folse.

21. The letter noted that Section 2.5 of the Indenture, which provides that "[s]o long as an Event of Default shall be continuing, the Note Register shall promptly, upon the written request of a Noteholder … furnish such Noteholder … with a list of all other Noteholders," entitled the Intervening Banks to this information. Declaration of Mark Folse, ¶ 10, Exhibit "A."

Plaintiff's Response: Not disputed as to the existence or contents of the letter from Coastal Commerce Bank to Wells Fargo, as Trustee, attached as Exhibit A to the Declaration of Mark Folse. Disputed to the extent this statement purports to adopt the legal conclusions set forth in that letter.

22. On December 17, 2014, Wells Fargo responded that Cede & Co. was the record Noteholder for every Note and provided no other information. Declaration of Mark Folse, ¶ 11, Exhibit "B."

Plaintiff's Response: Not disputed as to the existence or content of the letter from Wells Fargo, as Trustee, to Coastal Commerce Bank, attached as Exhibit B to the Declaration of Mark Folse.

23. On December 22, 2014, Coastal Commerce Bank again asked for a list of Noteholders and stated that the list should include the identities of the beneficial holders of the Notes. Coastal Commerce Bank never received a list of the beneficial holders of the Notes. Declaration of Mark Folse, ¶ 12, Exhibit "C."

Plaintiff's Response: Not disputed as to the existence or content of the letter from Wells Fargo, as Trustee, to Coastal Commerce Bank, attached as Exhibit C to the Declaration of Mark Folse, or the statement that "Coastal Commerce Bank never received a list of the beneficial holders of the Notes."

24. On January 16, 2015, Coastal Commerce Bank and Oxford University Bank, as well as the other the Intervening Banks, notified the Trustee that they had become aware that Notes were sold in 2005 to certain banks, including without limitation to Bank of Morton, that were not Qualified Purchasers as defined in the Indenture and in 15 U.S.C. § 80a-2(51)(A), thus requiring either of the Co-Issuers or the Trust Estate to register as an "investment company"

under the Investment Company Act of 1940, an Event of Default under the Indenture. Declaration of Mark Folse, ¶ 15, Exhibit "D."

Plaintiff's Response: **Not disputed as to the existence or content of the letter from Coastal Commerce Bank to Wells Fargo, as Trustee, and the Issuer, attached as Exhibit D to the Declaration of Mark Folse. Disputed to the extent this statement purports to adopt the factual assertions or legal conclusions set forth in that letter, for the reasons set forth elsewhere in this Rule 56.1(b) response to the Rule 56.1(a) Statement of Material Facts submitted by the Intervenors.**

25. In that same January 16, 2015 correspondence, Coastal Commerce Bank and Oxford University Bank asserted that pursuant to clause (y) under Section 5.4(a) of the Indenture, the Trustee is not permitted to liquidate the Trust Estate without a 100% vote of all Noteholders, including the Intervening Banks. The Intervenors also requested that the Trustee give notice to all Noteholders of the Event of Default under Section 5.1(e). Declaration of Mark Folse, ¶ 10, Exhibit "D."

Plaintiff's Response: **Not disputed as to the existence or content of the letter from Coastal Commerce Bank to Wells Fargo, as Trustee, and the Issuer, attached as Exhibit D to the Declaration of Mark Folse. Disputed to the extent this statement purports to adopt the factual assertions or legal conclusions set forth in that letter, for the reasons set forth elsewhere in this Rule 56.1(b) response to the Rule 56.1(a) Statement of Material Facts submitted by the Intervenors.**

26. Coastal Commerce Bank received a response from Wells Fargo on February 20, 2015, taking the position that it was not apparent that a Section 5.1(e) Event of Default had

occurred. It also asserted that it was "considering whether remedial action may be appropriate." Declaration of Mark Folse, ¶ 16, Exhibit "E."

Plaintiff's Response: Not disputed as to the existence or content of the letter from Wells Fargo, as Trustee to Coastal Commerce Bank, attached as Exhibit E to the Declaration of Mark Folse.

27. On March 19, 2015, the Intervenors responded to Wells Fargo's February 20, 2015 correspondence. The Intervenors reasserted that an antecedent Event of Default had occurred in 2005 when Bank of Morton purchased Notes and the issuers failed to register, and thus a 100% Noteholder vote was required for liquidation, and that all Noteholders were entitled to notice of this Event of Default. The Intervenors also reiterated their request for a list of all beneficial owners of the Notes. Wells Fargo has never provided the Intervening Banks with a list of beneficial owners of the Notes and has not given notice to all Noteholders of the Event of Default under Section 5.1(e). Declaration of Mark Folse, ¶ 17, Exhibit "F."

Plaintiff's Response: Not disputed as to the existence or content of the letter from Coastal Commerce Bank to Wells Fargo, as Trustee, and the Issuer, attached as Exhibit F to the Declaration of Mark Folse. Disputed to the extent this statement purports to adopt the factual assertions or legal conclusions set forth in that letter, for the reasons set forth elsewhere in this Rule 56.1(b) response to the Rule 56.1(a) Statement of Material Facts submitted by the Intervenors. Not disputed that Wells Fargo has never provided the Intervening Banks with a list of beneficial owners of the Notes, and has not given notice to all Noteholders of the alleged Event of Default under Section 5.1(e).

28. On July 31, 2015, the Issuer wrote to Bank of Morton asserting that the purchase by Bank of Morton was in violation of the representations and certifications made or deemed

made in connection with the purchase of the Notes. The July 31 letter further asserted that the purchase was void *ab initio* under Section 2.5(g) of the Indenture. Even though the Co-Issuer took the position that the transfer was void, it directed Bank of Morton to transfer its Notes to a Holder which is a Qualified Purchaser within 30 days pursuant to Section 2.5(k) of the Indenture. Declaration of Tito Echiburu, ¶ 7, Exhibit "A."

Plaintiff's Response: Not disputed as to the existence or content of the letter from the Issuer to Bank of Morton, attached as Exhibit A to the Declaration of Tito Echiburu.

29. On August 7, 2015, counsel for Bank of Morton responded to the Co-Issuer stating that it never made any representations and that it was not willing to risk violating state and federal securities law by offering the Notes for sale without providing full disclosure of all material information regarding the Notes. Bank of Morton therefore asked for a list of all Noteholders known or believed to be Qualified Institutional Buyers and Qualified Purchasers, as well as updated disclosures regarding all material information regarding the Notes, including without limitation, any fair valuation of the Notes and the status and prospect of any potential liquidation of collateral underlying the Notes. Declaration of Tito Echiburu, ¶ 8, Exhibit "B."

Plaintiff's Response: Not disputed as to the existence or content of the letter from Bank of Morton to the Issuer, attached as Exhibit B to the Declaration of Tito Echiburu.

30. On August 11, 2015, Wells Fargo posted to its website a Notice of Liquidation Direction and Suspension of Payments, stating that the Requisite Noteholders (defined under the Indenture of 66 2/3% of the senior tranche Noteholders) had directed Wells Fargo as Trustee to liquidate the Trust Estate as a remedy for the Event of Default under Section 5.1(a)(iii)(A). The Notice was not sent to the Intervening Banks and was not accompanied by an Accountant's

Certificate, as required by Section 5.4(a) of the Indenture. Docket 8-3, Declaration of Representative of Lansuppe Feeder, LLC, Exhibit "D."

Plaintiff's Response: Disputed as to the statement that "[t]he Notice was not sent to the Intervening Banks" on the basis that Plaintiff cannot present facts essential to dispute this statement because it has not had an opportunity to conduct sufficient discovery, and therefore objects pursuant to Fed R. Civ. P. 56(d). *See* Corkhill Decl. ¶¶ 15-17, 25(i). Further disputed as to the statement that "[t]he Notice . . . was not accompanied by an Accountant's Certificate, as required by Section 5.4(a) of the Indenture" to the extent that this statement offers a legal conclusion. Otherwise, not disputed.

31. On August 21, 2015, the Intervenors, among others, filed an action (the "Mississippi Action") against the Trustee in the Federal District Court for the Northern District of Mississippi, captioned *Oxford University Bank et al. v. Wells Fargo Bank, National Association, as Trustee for Soloso CDO 2005-1, Ltd.* (Case No. 3:15-cv-00145). (Complaint for Declaratory Judgment and for Injunctive and Other Relief). The Intervenors did not name Lansuppe as a party to that action because the Intervenors were unaware of the identity of Lansuppe as a beneficial Noteholder until the filing of this action. Docket 8-1, Declaration of Representative of Lansuppe Feeder, LLC, Exhibit "E."

Plaintiff's Response: Disputed as to the statement that "[t]he Intervenors did not name Lansuppe as a party to that action because the Intervenors were unaware of the identity of Lansuppe as a beneficial Noteholder until the filing of this action" on the basis that that statement is not supported by any of the cited evidence. Otherwise, not disputed.

32. In that action, the Intervenors seek a judgment declaring that: (a) the Soloso CDO 2005-1 was and is required to be registered as an Investment Company under the Investment

Company Act; (b) Sections 2.5(g) and 2.5(k) are attempts to create contractual safe harbors from compliance with the ICA prohibited under Section 47 of the ICA and are unenforceable; (c) Sections 2.5(g) and 2.5(k) of the Indenture do not and cannot remedy the failure to register as an Investment Company; (d) that 100% of Noteholders are required under Section 5.4(a) to vote on any liquidation due to the occurrence at inception in 2005 of an Event of Default under Section 5.1(e) of the Indenture, pre-dating the April 24, 2013 Event of Default; and (e) Defendant has not sent written notice to each of the Noteholders of any proposed sale or liquidation of the Trust Estate, together with a brief description thereof accompanied by an Accountant's Certificate as required by Section 5.4(a) of the Indenture, and that such notice is a condition precedent to any liquidation. Docket 8-1, Declaration of Representative of Lansuppe Feeder, LLC, Exhibit "E."

Plaintiff's Response: Not disputed as to the judgment sought by the Intervenors in the Mississippi Action.

33. After filing that complaint, counsel for the Intervenors was informed by counsel for the Trustee that the Trustee was unaware of the identities of the beneficial noteholders and stating that the Trustee only knew the identity of the record noteholder, Cede & Co., an affiliate of the Depository Trust Corporation. Because of those discussions and the Trustee's December 17, 2014 letter, the Intervenors understand that the Trustee maintains that a Noteholder for purposes of the Indenture is defined as the record noteholder, Cede & Co., not the holders of beneficial interests in the notes, such as Lansuppe and the Intervenors. Declaration of Alexander N. Breckinridge ¶ 2.

Plaintiff's Response: Not disputed.

34. Unbeknownst to the Intervenors, on September 7, 2015, Lansuppe notified the Trustee that it was exercising its rights under the Indenture to waive the section 5.1(e) Event of

Default. The Intervenors learned of this waiver when counsel for the Trustee informed counsel for the Intervenors of the filing of this lawsuit. Declaration of Alexander N. Breckinridge ¶ 3.

Plaintiff's Response: Not disputed.

STATEMENT OF ADDITIONAL MATERIAL FACTS

35. Lansuppe's investment advisor purchased more than 90% of Lansuppe's holdings in Soloso Notes—with a currently outstanding principal amount of over $125 million—before either Lansuppe or its investment advisor became aware that any Soloso investor was claiming to be a non-qualified purchaser (as that term is defined under the ICA). (Declaration of a Representative of Lansuppe Feeder, LLC ¶¶ 4-6, Nov. 5, 2015.)

36. Based on the evidence currently in the record, the Intervenors can identify only 14 beneficial holders of Notes issued by the Issuer.

DATED: New York, New York
November 5, 2015

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: ______________________

Jonathan E. Pickhardt
jonpickhardt@quinnemanuel.com
Andrew S. Corkhill
andrewcorkhill@quinnemanuel.com
Blair A. Adams
blairadams@quinnemanuel.com

51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000

Attorneys for Plaintiff
Lansuppe Feeder, LLC